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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.363 OF 2007

APPLICANTS

Walraj Service Centre, Bilaspur &
ors

Vs

NON-APPLICANT

Vijay Kumar Chandel.

POST FOR ORDER ON 21st SEPTEMBER, 2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.363 OF 2007

APPLICANTS

1. Walraj Service Centre, Link Road, Bilaspur.
2. Mohammad Arif, aged about 37 years.
3. Mohammad Tariq, aged about 30 years.
4. Smt. Khalida Afaq, aged about 55 years.

Applicants No.2 & 3 are sons of and applicant No.4 is the widow of Late Shri Afaq Mohammad.

Applicants no.2 to 4 are partners of Walraj Service Centre, Link Road, Bilaspur (C.G.)

All Applicants no.2 to 4 were residents of Behind Raghuraj Singh Stadium, Imalipara, Bus Stand road, Thaana Civil Lines, presently residing at B-3, Sai Vihar, Vyapar Vihar Road, District Bilaspur.

Vs

NON-APPLICANT

Vijay Kumar Chandel, son of Late Shri Arjun Singh Chandel, aged about 61 years, resident of Minocha Colony, Thaana Civil Lines, District Bilaspur (C.G.)

Present:

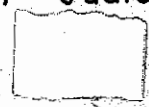
Mr. Kanak Tiwari, Sr. Advocate with Mr. Mateen Siddique, Advocate for the applicants.

ORDER

(Passed on 21.9.2007)

Per Dhirendra Mishra, J:

1. The applicants by this petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'the Code') have prayed for quashing of Criminal Case No. 1445/06 pending in the Court of learned Additional, Chief Judicial



Magistrate, Bilaspur and also prayed for quashing of order dated 30.7.2007 passed by the learned 3rd Additional Sessions Judge, Bilaspur in Criminal Case No.132/07 whereby the revision preferred against the order of framing charge under Section 138 of Negotiable Instruments Act, 1932 (for brevity 'the Act of 1932') passed by learned Additional Chief Judicial Magistrate has been rejected.

2. The allegations in the complaint were that the applicants and the complainant had family relations since the lifetime of Late Afag Mohammad, father of applicants No.2 & 3 and husband of applicant No.4, who happened to be the close friend of the complainant. The complainant used to advance loan to the applicants from time to time. The complainant advanced a loan of Rs.4,90,000/- to the applicants for their business and accordingly, cheques were issued in lieu of advance amount. The said cheques were dishonoured on two occasions and ultimately another cheque dated 17.8.2006 was issued by applicant No.4 in presence of applicant no.2 & 3, who are also partners of applicant No.1-Walraj Service Centre and who promised that the cheque will be honoured on being presented for encashment. However, the said cheque was dishonoured by the bankers of the applicants with a tip that amount of cheque exceeds arrangement. Therefore, a notice was issued despite that the applicants did not pay the amount against the cheque within the stipulated period.

3. Learned Senior Advocate for the applicants vehemently argued that from perusal of the averments of the complaint it would be evident that the complainant is a 'Money Lender' though he did not possess any registration certificate, as required under Section 11(b) of the C.G.

Money Lenders Act, 1934 (for brevity 'the Act of 1934'), and carrying business of money lending without valid registration certificate is an offence within the meaning of Section 11(f) of the Act of 1934. Cheque in question issued by applicant No.4 was in fact for the return of amount advanced by the complainant in the course of his illegal business of money lending and therefore, the recovery of any amount is forbidden by law and as such, dishonour of cheque issued by the applicants towards illegal act of the complainant, which is an offence under Section 11 (f) of the Act of 1934, cannot constitute an offence under Section 138 of the Act of 1932. Reliance is place on the judgments reported in the matters of Nutan Kumar and others Vs. IInd Additional District Judge, Banda and others¹, Kaloji Talusappa Ganagvathi Versus Khyanagouda and others² Mannalal Khetan and others Versus Kedar Nath Khetan and others³.

4. I have heard learned Senior Advocate for the applicants.
5. From perusal of the documents annexed with this petition as also additional documents filed along with an application dated 17.9.2007 for taking additional documents on record it appears that the complainant has already been examined and cross-examined during trial. From the averments in the complaint it is evident that the complainant has alleged that because of close relationship with the applicants' family, he used to help them at the time of their need in their business and there is no allegation that any interest was payable towards the advanced sum. Even otherwise it is open to the applicants to take suitable defence during

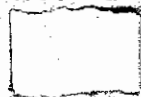
¹ AIR 1994 ALLAHABAD 298

² 1970 (3) Supreme Court Cases 862

³ (1977) 2 Supreme Court Cases 424

trial to establish that the transaction between the parties is forbidden by law.

6. In the matter of Nutan Kumar & others¹ the question for consideration was whether the agreement of lease between the landlord and the tenant in contravention of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is void and whether the said agreement is enforceable in law and the decree for ejectment of tenant can be passed in favour of the landlord and the court held that any agreement, which is forbidden by law is void and neither party can enforce the said agreement, as it does not give any relationship to the parties of the agreement.
7. In the matter of Kaloji Talusappa Gangavathi² suit filed by a money lender, who is carrying business without licence for recovery of amounts advanced in the course of his business was dismissed on the ground that the Act imposes restriction from carrying said business. Similarly, in the matter of Mannalal Khetan and other³ it has been held that where a contract involves in its fulfillment the doing of an act which is prohibited by statute, it is a void contract.
8. There is no averment in the complaint that the complainant is the money lender or that he advanced the loan to the applicants on interest. On the other hand, there is an allegation that in lieu of the loan of Rs.4,90,000/- obtained by the applicants, they gave cheque of Rs.4,90,000/- to the complainant, which was produced for encashment before the banker of the applicants and the same was dishonoured with a tip that the amount of cheque exceeds arrangement. The complainant issued notice to the applicants mentioning the fact that cheques given by them have been dishonoured by their banker and they should pay the amount of cheque to the complainant. However, the notice remained un-



replied and the applicants did not pay the amount against the cheque to the complainant. Thus, from perusal of the allegations in the complaint prima facie ingredients of offence under Section 138 of the Act of 1932 are present in the complaint and particulars of the offence framed against the applicants under Section 138 of the Act of 1932 and subsequently confirmed by the revisional court is in accordance with law and no case is made out for interference by this Court in exercise of powers under Section 482 of the Cr.P.C.

9. In the result, the petition being devoid of any substance is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

Roshan/-